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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/806,423	03/30/2001	Michael A. Popp	SSM488US	1226

7590 01/13/2005

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EXAMINER

MANOHARAN, VIRGINIA

ART UNIT	PAPER NUMBER
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1764

DATE MAILED: 01/13/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/806,423

Applicant(s)

POPP ET AL.

Examiner

Virginia Manoharan

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 September 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,3-19 and 22-51 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,3-19 and 22-51 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

The amendment filed September 17, 2004 is objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. 35 U.S.C. 132 states that no amendment shall introduce new matter into the disclosure of the invention. The added material which is not supported by the original disclosure is as follows: the amendment at paragraph beginning at page 8, line 10 of the specification such as: "...includes ... or right angled portion ... alternatively pipe 6 can contain a conventional trays." (Underlining supplied). Applicant is required to cancel the new matter in the reply to this Office Action.

Claims 50 & 51 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

The negative proviso in the recitation of "...A process for concentrating an aqueous alcoholic solution without negatively affecting the properties of the concentrated extract from said process", recited in the preamble of claim 50, is nowhere in the specification. However, if support can be pointed- out, at least, the specification is objected to as failing to provide proper antecedent basis since the above limitation is not positively recited in the specification. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o).

Claims 14-19 & 39-51 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

a) The process of claim 14 does not differ substantially with the process of claim 50 as required under 37 CFR 1.75(b). The difference seen is in the preambles, i.e., claim 14, e.g., recites the process for concentration of aqueous alcoholic solutions having a fixed water to alcohol ratio, whereas, claim 50 recites a process for concentrating an aqueous alcoholic solution without negatively affecting the properties of the concentrated extract from said process. However, the above difference is deemed not to constitute a patentable distinction because the preamble of a claim may or may not even be given patentable weight.

b). The ratio as "...a fixed water to alcohol ratio" in claim 14 is not specified in the claims. The ratio is not found in the specification.

c). It is unclear what constitute the properties of the concentrated extract that are not negatively affected by the process, referred to in the preamble of claim 50, especially since properties such as: e.g., surface tension and temperature appear to be affected. Note e.g. page 2, third full paragraph of the specification.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1, 4-8, 14, 22-23, 25, 27 30-32, 35-38 & 49-51 are rejected under 35 U.S.C. 103(a) as being unpatentable over Baumann in view of Kramer Sr.(4,305,790).

The above references are applied for the same combined reasons as set forth at pages 4 and 5 of the previous Office Action.

Claims 3, 9-13, 15-19 24 26 28-29 33-34 & 39-48 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant's arguments filed September 17, 2004 have been fully considered but they are not persuasive.

Applicants following arguments such as.

"..Baumann and Kramer relate to processes and apparatuses allowing recovery of the solvent from a solution. This solvent is desirably obtained as pure as possible for further reuse or other purposes. The bottoms product of the initial evaporation step, however, is considered as waste material and discharged in case of Baumann or is stated to be useful as a fertilizer or animal feed supplement according to Kramer. In neither case no care need be taken about the composition of the bottoms of the evaporator. Contrast this with the present invention which has for a goal to maintain the protection of the bottoms product in the evaporator..." are not considered well-taken. Claims 1, 14 and 50, for example, are not limited to the above argued subject matter commensurate with the arguments. In fact, these claims recite treatment of the

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overhead product (its condensation and recycling) rather than treatment of the bottoms product.

Thus, in the absence of anything which may be "new" or unexpected result", a prima facie case of obviousness has been established by the art and has not been rebutted.

Unexpected results must be established by fractural evidence. Mere arguments or conclusion statements in the specification, applicants' amendments, or the Brief do not suffice. In re Lindner, 457 F.2d 506, 508, 173 USPQ 356, 358 (CCPA 1972). In re Wood, 582, F.2d 638, 642, 199 USPQ 137, 140 (CCPA 1978).

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

GB '942 disclosure the recitation of overhead vapor from distillation process.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of

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the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Virginia Manoharan whose telephone number is (571) 272-1450. The examiner can normally be reached on Tuesday thru Friday from 7:30 AM to 6:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glenn Caldarola can be reached on (571) 272-1444. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Manoharan/LR
January 10, 2005


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1/10/05